

To: Jackson, Scott[Jackson.Scott@epa.gov]
Cc: Bohan, Suzanne[bohan.suzanne@epa.gov]; Daly, Carl[Daly.Carl@epa.gov]; Russ, Timothy[Russ.Tim@epa.gov]; Coda, Tom[Coda.Tom@epa.gov]
From: Tuers, Charis
Sent: Thur 8/29/2013 9:33:36 PM
Subject: Re: Presumed to Conform List Development

Referred to BLM

Charis A. Tuers
Air Resource Specialist
Bureau of Land Management
Wyoming State Office
(307) 775-6099
ctuers@blm.gov

On Thu, Aug 29, 2013 at 2:33 PM, Jackson, Scott <Jackson.Scott@epa.gov> wrote:

Hi Charis,

With regard to the BLM's presumed to conform questions for prescribed fires, in your email attached further below, EPA offers the following background information and subsequent responses to the BLM's questions. The quick answer is that as both the State and EPA have approved Wyoming's Smoke Management Plan (SMP) (WAQSR Chapter 10, Section 4), BLM would be considered to be meeting the requirements of WAQSR Chapter 8, Section 3(c)(ix)(B) as long as the BLM's prescribed fires are executed in accordance with the provisions of the State's SMP. Please read below for more details.

Background Information:

A.) Wyoming General Conformity EPA Approval: The final rule for Wyoming's General Conformity requirements (WAQSR Chapter 8, Section 3 and Section 5) was published on August 15, 2013 (78 FR 49865) and is effective on September 16, 2013.

B.) The State's WAQSR Chapter 8, Section 3(c)(ix)(B) Presumed to Conform Requirements for Prescribed Fires and Smoke Management states the following:

Chapter 8, Section 3(c)(ix)(B) reads as follows:

(ix) Emissions from the following actions are “presumed to conform”:

(B) Prescribed fires conducted in accordance with a smoke management program (SMP) which meets the requirements of EPA’s Interim Air Quality Policy on Wildland and Prescribed fires or an equivalent replacement EPA policy.

In addition, we wish to note for the BLM’s information that Chapter 8, Section 3(c)(x) states the following with respect to the provisions in Section 3(c)(ix):

Even though an action would otherwise be "presumed to conform" under paragraphs (vi) or (ix) of this subsection, an action shall not be "presumed to conform" and the requirements of Subsection (a), 40 CFR 93.151, Subsections (d) through U) and Subsections (I) through (n) shall apply to the action if EPA or a third party shows that the action would:

- (1) Cause or contribute to any new violation of any standard in any area;
- (2) Interfere with provisions in the applicable SIP or TIP for maintenance of any standard;
- (3) Increase the frequency or severity of any existing violation of any standard in any area;
or
- (4) Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or TIP for purposes of:
 - (i) A demonstration of reasonable further progress;
 - (ii) A demonstration of attainment; or
 - (iii) A maintenance plan.

C.) Region 8’s Approval of Wyoming’s Smoke Management Plan (WAQSR Chapter

10, Section 4):

Region 8 approved Wyoming's Smoke Management Plan (SMP), WAQSR Chapter 10, Section 4, on December 12, 2012 (77 FR 73926), effective on January 11, 2013. In this final rule, we noted in the top of the second column on page 73927 that EPA had previously proposed approval of Chapter 10, Section 4 in conjunction with the SIP as it implements the requirements for smoke management under 40 CFR 51.309(d)(6). For reference, here is a weblink to Region 8's webpage that contains the version of WAQSR Chapter 10, Section 4 that was approved on December 12, 2012:

<https://yosemite.epa.gov/R8/R8Sips.nsf/641057911f6bd13987256b5f0054f380/044dd2bd2a93adfb87257afd0>

EPA Responses to BLM's Questions:

The BLM raised the following questions and requested clarification and responses from EPA:

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As both the State and EPA have approved Wyoming's SMP (WAQSR Chapter 10, Section 4), BLM would be considered to be meeting the requirements of WAQSR Chapter 8, Section 3(c)(ix)(B) as long as the BLM's prescribed fires are executed in accordance with the provisions of the State's SMP. Therefore, prescribed fires executed with respect to Section 3(c)(ix)(B) do not need to appear on a presumed to conform list. EPA does recommend that BLM continue its current practices with prescribed fires in Wyoming by fully documenting these activities, and following other requirements, as is required in the State's SMP.

In reviewing the email information further below, and in consideration of Wyoming's General Conformity WAQSR Chapter 8, Section 3 and Wyoming's SMP WAQSR Chapter 10, Section 4, it appears there may be some confusion with respect to which requirements apply:

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From the State: WAQSR Chapter 8, Section 3(c)(iii)(D); "Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan" may apply.

In actuality, the BLM and State are looking at two different provisions of the State's General Conformity requirements.

WAQSR Chapter 8, Section 3(c)(iii)(D) ("Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan") applies to broader federal land management actions than just prescribed fires. This section would apply if the BLM has a land management plan (other than the SMP) which they wish to demonstrate conforms with the SIP (or desire to be included in the SIP) and thus would have a presumption of conformity for all actions conducted in accordance with that "conforming land management plan." For just prescribed fires, the BLM may elect to only meet the requirements of WAQSR Chapter 8, Section 3(c)(ix)(B) which requires that the BLM's prescribed fires are executed in accordance with the provisions of the State's SMP. The BLM does not need to meet both provisions (Section 3(c)(iii)(D) and Section 3(ix)(B)) of WAQSR Chapter 8, Section 3.

EPA appreciates the opportunity to provide clarification on these issues. Please let us know if there are any additional questions.

Thanks,

Scott

Scott Jackson, Unit Chief

Indoor Air, Toxics and Transportation Unit
U.S. EPA Region 8

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Denver, Colorado 80202-1129

(303) 312-6107

From: Tuers, Charis [mailto:ctuers@blm.gov]

Sent: Friday, August 09, 2013 10:24 AM

To: Jackson, Scott; Russ, Timothy; Coda, Tom

Cc: Bohan, Suzanne

Subject: Fwd: Presumed to Conform List Development

Referred to BLM

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Charis A. Tuers

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From: **Darla Potter** <darla.potter@wyo.gov>

Date: Fri, Jul 26, 2013 at 3:19 PM

Subject: Re: Presumed to Conform List Development

To: "Tuers, Charis" <ctuers@blm.gov>

Cc: Tina Anderson <Tina.Anderson@wyo.gov>, Jeni Cederle-WDEQ-AIR
<jeni.cederle@wyo.gov>, Brian Hall <brian.hall@wyo.gov>

Charis,

Sorry for the delayed response as I misplaced this in my inbox and ran across it today in trying to make sure I was keeping up on emails that required my action.

Given the language in WAQSR Chapter 8, Section 3 (c)(iii)(D) "Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan." it implies to me much more that following a prescribed burn management program as it specifically lists "a conforming land management plan".

As such, I cannot say that following the State's Smoke Management Program is sufficient to say that prescribed burning actions are exempt.

I would suggest looking into what other BLM is doing elsewhere in respect to General Conformity for

prescribed fire in nonattainment areas and then we can further discuss.

Darla

Darla J. Potter

AQRM Program Manager

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On Fri, Jun 28, 2013 at 11:43 AM, Tuers, Charis <ctuers@blm.gov> wrote:

Referred to BLM

Charis A. Tuers

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From: **Putnam, Richard** <rputnam@blm.gov>

Date: Fri, Jun 28, 2013 at 11:29 AM

Subject: Re: Presumed to Conform List Development

To: "Tuers, Charis" <ctuers@blm.gov>

Cc: "Foster, Kimberlee" <kfoster@blm.gov>, Shane DeForest <sdefores@blm.gov>,
Gregory Reser <greaser@blm.gov>

Referred to BLM

Richard Putnam

AFMO - Fuels

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On Mon, Jun 24, 2013 at 12:07 PM, Tuers, Charis <ctuers@blm.gov> wrote:

Referred to BLM

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